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March 15, 2011

TO: ALL INTERESTED PARTIES

FROM: CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

SUBJECT: **SEARCH FOR OUTSIDE COUNSEL TO PROVIDE THE BOARD OF
ADMINISTRATION LEGAL ADVICE ON PROPOSED DECISIONS
FROM THE OFFICE OF ADMINISTRATIVE HEARINGS
(NO. _____)**

The California Public Employees' Retirement System (CalPERS) is seeking to contract with one or more private law firms or contract attorneys to advise the CalPERS Board of Administration on questions pertaining to substantive and procedural legal issues arising from the consideration of proposed administrative decisions (Proposed Decisions) received from the Office of Administrative Hearings (OAH). On behalf of CalPERS, I invite you to submit an application for this contract position.

Background

CalPERS is the largest public retirement system in the nation, with an active and retired membership of over 1.6 million. The System's assets are currently valued in excess of \$220 billion, invested principally in bonds, stocks, mortgages, and real estate.

CalPERS retains, through three-year contracts, various law firms to assist in-house legal staff in providing legal services to the CalPERS Board of Administration (Board) and staff. These firms have various areas of expertise, including investment transactions, fiduciary issues, health care issues, bankruptcy, tax, and securities law. The purpose of this invitation is to select outside counsel (counsel) to work for the period of May 1, 2011, or as soon thereafter as possible, through December 31, 2013.

When disputes arise over the interpretation of the Public Employees' Retirement Law (PERL), Public Employees' Medical and Hospital Care Act (PEMHCA), or other laws or programs administered by CalPERS, or over an individual's CalPERS eligibility for benefits, CalPERS utilizes an administrative hearing process to resolve these disputes. This process is conducted in accordance with the Administrative Procedures Act (APA) and the Board's procedural regulations to adjudicate such disputes. Pursuant to these

statutes and regulations, matters are referred to the OAH for an administrative hearing. The administrative hearings are presided over by a neutral Administrative Law Judge (ALJ). After completing the evidentiary hearing process, the ALJ forwards his or her Proposed Decision to CalPERS for Board review and action.

The Board considers and takes action on Proposed Decisions at its regularly scheduled Board meetings. At its meetings, the Board will decide whether to adopt the Proposed Decision as its own, make technical or minor changes and adopt the Proposed Decision as its own, reject the Proposed Decision and decide the matter itself from the record, or reject the decision and remand the matter back to the ALJ for the taking of more evidence.

Counsel, once selected for this purpose, would provide advice and representation on procedural and substantive legal issues that arise while the Board considers and takes action on Proposed Decisions. Such services may include, but are not limited to the following areas:

- 1) Review and analysis of Proposed Decisions received by CalPERS to identify key legal issues and raised by each decision and attend the Board's regularly scheduled meetings prepared to discuss each decision and answer any questions posed by the Board;
- 2) Advice on substantive and procedural legal issues raised in the Proposed Decisions, including matters related to the PERL, the PEMHCA, the APA, due process and constitutional law, probate law, community property law, and other relevant areas of the law.
- 3) Advice on substantive and procedural legal questions submitted by Board Members relating to the Board's consideration and action on Proposed Decisions; and
- 4) Such matters as the CalPERS Board may request and Contractor agree to handle.

As has been well publicized, the State of California is under immense budgetary pressures. CalPERS is not immune from those pressures and we seek to control costs in this incredibly tough fiscal environment. Fee proposals should reflect this environment. Flat monthly fee structures, or similar arrangements, are encouraged.

CalPERS recognizes diversity as a competitive advantage, and places a high value on a diverse working environment. As part of this solicitation, CalPERS is asking responding law firms to describe the firm's commitment to diversity and diversity initiatives and programs. Firms granted contracts as a result of this process will be asked to report annually regarding various diversity statistics, including the number of individuals of diverse backgrounds employed as attorneys, partners, and shareowners.

General information regarding CalPERS can be found at <http://www.calpers.ca.gov>.

Minimum Qualifications

Law firms or contractors wishing to be considered for this contract must meet the following minimum qualifications:

- Employ attorney or attorneys who are licensed to practice law in the State of California.
- Have malpractice insurance, or be self-insured.
- Have the experience described below. (See Application Process, paragraph D.3.)

Application Process

If you wish to be considered for this contract, you must follow these steps:

- A. Complete and return to CalPERS **Attachment A** concerning your commitment to Disabled Veteran Business Enterprises (DVBES).
- B. Prepare and return to CalPERS the California Taxpayer and Shareholder Protection Act Declaration (**Attachment B**).
- C. This contract solicitation process is subject to the CalPERS Statement of Policy for Contract-Related Disclosure Requirements (the "Contract-Related Disclosure Policy") (**Attachment C**). Pursuant to the Contract-Related Disclosure Policy, the firm shall complete and return to CalPERS the acknowledgement and declaration form and, if applicable, prepare and submit all of the disclosures required by Section A of the Contract-Related Disclosure Policy.
- D. Prepare and return to CalPERS a Qualifications Statement, limited to no more than three single-spaced pages, with a minimum of the following information:
 1. The name of the attorney who will act as "lead" on the CalPERS contract;
 2. The name(s) of other attorney(s) who will be part of the CalPERS team;
 3. The experience of the attorneys named above in advising a public pension plan on pension and health benefit matters; the types of pension and health benefit matters handled; including but not

limited to, the types of matters related to consideration of proposed administrative decisions described above in the fifth paragraph of the "Background Section";

4. A brief narrative describing the unique characteristics of your firm and the attorneys who you believe would be best suited to CalPERS' needs;
5. Two client references in the area of pension law and/or health benefits law; and,
6. A statement that the firm meets the Minimum Qualifications described above. (Documentation of Qualifications may be required before contract award.)

E. Prepare and return a Diversity Statement, limited to no more than two single-spaced pages, describing, at a minimum, the following:

1. The firm's written strategy for increasing diversity at the firm.
2. The firm's hiring and mentoring programs targeted to women and persons of diverse backgrounds.
3. The firm's participation in diversity surveys, such as Vault/MCCA, including results from those surveys.
4. The firm's diversity manager and that person's role in the firm.
5. The firm's willingness and ability to abide by CalPERS Legal office annual diversity reporting requirements, including reporting the number of individuals of diverse populations in each classification of attorneys employed by the firm.
6. [Optional] The firm's make-up in terms of the numbers of individuals of diverse backgrounds that comprise various positions. **Attachment D**, Outside Counsel Diversity Data report, may be utilized to provide this information.

F. Prepare and return to CalPERS a Fee Proposal. This proposal must state:

1. Whether the firm is willing to comply with CalPERS' billing procedures, as described in **Attachment E**;
2. **Contained within the CalPERS' billing procedures is a new California State Franchise Tax Board requirement regarding**

state income tax withholding requirements for nonresident vendors (see Section VI – Billing Procedures – Attachment E). This new requirement may apply to outside counsel firms.

3. A single hourly rate for partners, and a separate hourly rate for associates;¹
4. A statement that the firm's administrative costs will be charged at 3.5% of the hourly billings (except for travel expenses and court fees); and
5. Any alternative billing proposal (including a flat monthly fee) the firm may wish CalPERS to consider.

Legal Proceedings

Please provide a description of legal proceedings (including grand jury proceedings) brought against the firm, any of its business entities, or persons or entities providing services to or on behalf of the firm or any of its business entities as part of the proposal. If the firm, or its business entity, or persons in its employ, are under criminal indictment in relation to the business of the firm, CalPERS, in its sole discretion, may reject the Proposal.

CalPERS' No Contact Rule

This contract solicitation process is subject to subsection (a) of Government Code section 20153 (**Attachment F**). Pursuant to section 20153, applicants are prohibited from communicating with CalPERS Board or staff members concerning any topic, except as expressly provided in subsection (a) of Government Code section 20153. Any applicant who willfully violates these communication restrictions will be immediately disqualified from the solicitation process. If you have any questions concerning the process, please direct them solely to Gina Ratto, Deputy General Counsel, via email, as noted below.

Copies

Please submit the original plus three (3) copies of your submission package.

¹ We remind you that the proposed contract is for a three-year term. Any increases in the hourly rates during this term must be proposed as part of your proposal.

Filing Deadline

Your complete submission package must be **received** at CalPERS' Executive Office **by 5:00 p.m on April 5, 2011.** Packages received after this date will not be considered.

General Delivery

California Public Employees'
Retirement System
Attn: Board President, Executive Office

P.O. Box 942701
Sacramento, CA 94229-2701

Express Delivery

California Public Employees'
Retirement System
Attn: Board President, Executive Office,
Lincoln Plaza North
400 Q Street, Room 3340
Sacramento, CA 95811

Packages will be evaluated by the Board's President on behalf of the Board, which may thereafter conduct interviews of selected finalists. These interviews, if deemed necessary, are anticipated to take place in April of 2011 in Sacramento and the Board will thereafter select counsel. In the event it is determined interviews are necessary, the appropriate notice will be provided. In the alternative, the Board President will select counsel.

Thank you for taking the time to consider this invitation. If you have any questions, please email them to **Gina Ratto, Deputy General Counsel, at Gina_Ratto@calpers.ca.gov**. Please note that only questions regarding procedures will be answered. Otherwise, the communication restrictions relayed in **Attachment F** will apply.

Sincerely,

PETER H. MIXON
General Counsel

Attachments



DISABLED VETERAN BUSINESS ENTERPRISE CONTRACT PARTICIPATION

GEN 117 (11/02/09)

CalPERS Board of Administration seeks participation in its contract process by disabled veteran business enterprises (DVBEs). Only State of California, Office of Small Business and DVBE Certification (OSDC) certified DVBEs who perform a commercially useful function relevant to this solicitation may be used to satisfy the DVBE program requirements. In order to obtain DVBE participation credit, the DVBE contractor must be certified by OSDC, by no later than 5:00 p.m. on the bid due date.

Please read the following requirements carefully. Failure to comply with the DVBE requirements will cause your bid/proposal to be deemed nonresponsive and ineligible for award of this contract.

I. DEFINITIONS

For the purpose of this DVBE participation requirement, the following definitions apply:

- A. **Disabled veteran** means a veteran of the military, naval, or air services of the United States with a **service-connected disability of ten percent or more**, who is a resident of the State of California.
- B. **DVBE** means a business concern certified by OSDC as meeting all of the following:
 - 1. A sole proprietorship at least 51 percent owned by one or more disabled veterans; or in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture's management and control and earnings are held by one or more disabled veterans.
 - 2. The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business concern.
 - 3. It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign based business.

Note: View certification information at <http://www.pd.dgs.ca.gov/smbus> or contact the OSDC at (916) 375-4940.

- C. **Commercially Useful Function** A DVBE contractor, subcontractors, or supplier is considered performing a commercially useful function when it meets all of the following criteria:

1. The business concern is:
 - (a) Responsible for the execution of a distinct element of the work of the contract;
 - (b) Carries out its obligation by actually performing, managing, or supervising the work involved;
 - (c) Performs work that is normal for its business, services and function; and
2. The business concern is not further subcontracting a greater portion of the work that is greater than would be expected by normal industry practices.

A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of small business, microbusiness, or DVBE participation. When subcontracting to small, micro, or DVBE subcontractors, the intent is for the subcontractor to provide goods or services required for the performance of the contract rather than artificial or incidental participation that provides an "appearance" of participation to meet the socio-economic objectives of these programs.

- D. **Business Utilization Plan** When approved by the Department of General Services (DGS), Procurement Division, a bidder may submit a Business Utilization Plan (BUP) to satisfy DVBE participation solicitation requirements up to 3 percent for procurements for materials, supplies and equipment, including electronic data processing and telecommunication goods and services. The BUP must have been submitted and approved by DGS prior to the bid due date in order to satisfy DVBE compliance requirements. View more information at <http://www.pd.dgs.ca.gov/dvbe/default.htm>.

II. **DVBE PARTICIPATION OPTIONS AND DOCUMENTATION REQUIREMENTS**

In order to be **responsive** to this requirement, the bidder must fulfill one of the following three alternatives:

- A. **Option A - Contract Goal.** To fulfill the contract goal requirement, the bidder must meet or exceed the goal of 3 percent DVBE participation for the proposed contract.

Bidders will complete and submit Exhibit 1, DVBE Participation Summary.

- B. **Option B – DVBE Incentive.** A bidder may submit DVBE participation percentages to receive and qualify for the incentive program. Bids that fail to submit the required form and confirm the level of DVBE participation will not be eligible to receive the DVBE incentive.
- C. **Option C - Business Utilization Plan.** A bidder may submit an approved DVBE Business Utilization Plan (BUP) to satisfy DVBE participation solicitation requirements up to 3 percent for procurements for materials, supplies and equipment, including electronic data processing and telecommunication goods and services.

The bidder will submit Exhibit 1, DVBE Participation Summary.

III. USE/SUBSTITUTION OF PROPOSED DVBE

If awarded the contract, the successful bidder must use the DVBE subcontractor and/or supplier proposed in their final bid/proposal unless the contractor requests substitution via prior written notice to CalPERS and CalPERS approves such substitution. At a minimum, the request must include:

- A. A written explanation for the substitution;
- B. The identity of the person or firm substituted;
- C. Any change in the work or dollar/percentage amount caused by the substitution; and
- D. A revised Participation Summary (Exhibit 1) and applicable certification(s).

The request and CalPERS approval or disapproval of the substitution shall not affect compliance with any other provision of law, or any other contract requirements relating to substitution of subcontractors.

IV. QUESTIONS

The information below is provided to answer commonly asked questions and clarify potential misconceptions of the contract participation goal requirement. If further clarification is necessary, you may contact CalPERS Contracts Officer at (916) 795-3020 or ossd_contractsadmin@calpers.ca.gov for assistance.

A. Meeting the Goal

- 1. Proposing goal attainment is a commitment to use disabled veteran business enterprises for 3 percent of the contract amount. If awarded a contract, CalPERS expects the DVBE subcontractors or suppliers to be utilized as identified in your proposal, unless a substitution is approved by CalPERS.
- 2. An expression of intent to subcontract with unidentified DVBE firms at some future date is insufficient to comply with DVBE goal requirements.

Commitments must be finalized upon submission of your contract participation documentation to CalPERS.

3. **Out-of-state firms are not exempt from the contract participation goal requirements. To do business with CalPERS, all bidders must meet the goal requirement of 3 percent DVBE.**



DISABLED VETERAN BUSINESS ENTERPRISE CONTRACT PARTICIPATION

Check the appropriate box to indicate the option with which you chose to comply. Complete the exhibits which apply to the option chosen. Please read all instructions carefully prior to completing this form. **Only California certified DVBEs who perform a commercially useful function relevant to this solicitation may be used to satisfy the DVBE program requirements.**

- ☐ **Option A** – I commit to meeting the DVBE participation requirement of 3 percent or more – **Complete and submit Exhibit 1**
- ☐ **Option B** - I commit to the DVBE incentive program percentage – **Complete and submit Exhibit 1**
- ☐ **Option C** – I submit a copy of my firm's "Notice of Approved DVBE Business Utilization Plan"

In order to meet the DVBE participation requirement, at least one DVBE must be listed. List the specific goods and/or services with the dollar and/or percentage value(s) that the DVBE(s) commit to provide and the DVBE's tier (0 = prime contractor, 1 = subcontractor to the prime contractor, 2 = subcontractor to Tier 1 subcontractor, etc.) If both the dollar amount and the percentage are listed the highest value will prevail.

DVBE Company Name		DVBE Certification Number	
Contact Name		Telephone Number	
Fax Number	E-mail (if available)		
Street Address, City, State and Zip Code			
Specific Goods and/or Service		Claimed DVBE % %	Tier
DVBE Company Name		DVBE Certification Number	
Contact Name		Telephone Number	
Fax Number	E-mail (if available)		
Street Address, City, State and Zip Code			
Specific Goods and/or Service		Claimed DVBE % %	Tier



CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
California Taxpayer and Shareholder Protection Act Declaration

Firm's Name _____

The firm named above certifies, that the firm is eligible to contract with the State of California and CalPERS, pursuant to the provisions of the California Taxpayer and Shareholder Protection Act of 2003 (Public Contract Code section 10286 et. seq.).

I, the official named below, hereby declare that I am duly authorized to make this declaration on behalf of the above named firm. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on the date listed below.

Authorized Signature

Date

Name and Title (Please Print)

**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATEMENT OF POLICY**

**FOR
CONTRACT-RELATED DISCLOSURE REQUIREMENTS
("Policy")**

This Policy is effective December 1, 2010. This Policy is intended to supplement any applicable provisions of state or federal law.

This Policy sets forth the circumstances under which the California Public Employees' Retirement System ("CalPERS") shall require the disclosure of specific information from any individual or entity seeking to contract with CalPERS. The goal of this Policy is to help ensure that the CalPERS contracting process is impartial by disclosing the circumstances that may create actual, potential, or perceived conflicts of interest or bias. This Policy is intended to apply broadly to all contractors with whom CalPERS contracts. CalPERS adopts this Policy to require, broad, timely, and updated disclosure of all required disclosure information.

This Policy applies to all new contracts and amendments, to existing contracts (including contract extensions), letters of engagement, consulting purchase orders and similar agreements and to bidders' proposals across the System where the total amount of agreement is \$10,000 or more. The Policy also applies to proposals and contract awards made from Requests for Proposal and Invitations for Bid, regardless of amount.

CONTRACTOR RESPONSIBILITIES

- A. Each contractor and prospective contractor (collectively, "Proposer/Contractor") providing or seeking to provide services to CalPERS by way of items referred to in the paragraph immediately above (collectively, "Contract") shall be required to disclose, as part of the contracting process, the information described in subparagraphs 1-6 below. Failure to timely disclose any of the information required in subparagraphs 1-6, will result in the disqualification of the Proposer/Contractor, or cancellation of the Contract, if the Proposer/Contractor knew, or should have known, of the underlying facts and information subject to these requirements at the time the Proposer/Contractor sought to contract with CalPERS.
1. Every individual or entity hired, engaged, retained by, or serving for the benefit of or on behalf of the Proposer/Contractor, as a finder, solicitor, marketer, lobbyist, consultant, broker, representative, agent or other intermediary (collectively "Agent") to assist, directly or indirectly, in preparing a contracting proposal or bid to CalPERS or in securing a CalPERS Contract. If there are none, the Proposer/Contractor shall include a statement to that effect.
 2. For each identified Agent, a copy of any and all contracts, agreements, or other documents memorializing the relationship between the Proposer/Contractor and the Agent including, but not limited to, any and all

documents regarding business objectives, services provided, and compensation paid to the Agent by the Proposer/Contractor.

3. For each identified Agent, any financial or familial relationships between the Agent (and/or his/her current or former spouse(s) or immediate family) and a current or former board or staff member of CalPERS.
4. For each identified Agent, payments, gifts, loans, or other things of value given or offered by the Agent to a current or former board or staff member of CalPERS during the twelve (12) months preceding the initiation of the Contract.
5. For each Proposer/Contractor, any payments, gifts, loans or other things of value given or offered by the Proposer/Contractor to a current or former board or staff member of CalPERS during the twelve (12) months preceding the initiation of the Contract.
6. Payments, gifts, loans, or other things of value for purposes of Items 4 and 5 include, but are not limited to cash, meals, travel, awards, campaign contributions, charitable donations, and/or reimbursements.

For purposes of this Policy, "payments, gifts, loans or other things of value" do not include informational material such as books, reports, pamphlets, calendars, or periodicals within the meaning of Government Code section 82028, subdivision (e). No payment for travel or reimbursement for any expenses shall be deemed "informational material." "Payments, gifts, loans or other things of value" also do not include items which CalPERS determines are negligible in light of their amount, nature, purpose, or timing. "Payments, gifts, loans or other things of value" further does not include free admission, and refreshments and similar non-cash nominal benefits provided to any current or former board or staff member of CalPERS by reason of the board or staff member giving a speech, participating on a panel or making a substantive formal presentation at a seminar or similar event, where the speech, participation or presentation is for official CalPERS business and the member is representing CalPERS in the course and scope of his or her official duties.

- B. All disclosures provided pursuant to this Policy shall be considered public records. Proposers/Contractors shall be so notified as part of the contracting process.
- C. The required disclosure information set forth above must be provided by Proposer/Contractor for all new and amended Contracts across the System. For the purposes of a proposal, all disclosure information will be due no later than the final filing date for responses to CalPERS Contract solicitations. For the purposes of new Contracts and Contract amendments, engagements and purchase orders, all disclosure information will be due no later than the date of execution.
- D. Failure of a Proposer/Contractor to timely disclose the information set forth in paragraph IV. A. of this Policy will result in the disqualification of the Proposer/Contractor if the Proposer/Contractor knew, or should have known, of this information at the time Proposer/Contractor sought to contract with CalPERS.

Disqualification may occur at any time before the Contract award is made by CalPERS.

- E. Failure of a Proposer/Contractor to timely disclose the information set forth in paragraph IV. A. of this Policy may result in termination of the Contract if the Proposer/Contractor is awarded a Contract and the Proposer/Contractor knew, or should have known, of this information at the time Proposer/Contractor sought to contract with CalPERS. CalPERS, in its sole discretion, may exercise this right to terminate the Contract.
- F. CalPERS may reject proposals, if in its sole judgment based on the good faith and reasonable belief that the disclosure could demonstrate a conflict of interest or improper influence in connection with the decision to award the contract, or could contribute to an appearance of improper influence or conflict of interest in the award of the contract.
- G. The General Counsel shall have delegated authority to exempt a contracting process from these requirements but only when in his or her opinion it is necessary to meet the fiduciary requirements imposed on the system. If any contracting process is exempted, the General Counsel shall promptly report this exemption to the Board of Administration.

**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM****Contract-Related Disclosure Requirements Policy**

Firm's Name _____

The goal of this Policy is to help ensure that the CalPERS contracting process is impartial by disclosing the circumstances that may create actual, potential, or perceived conflicts of interest or bias. This Policy is intended to apply broadly to all contractors with whom CalPERS contracts. CalPERS adopts this Policy to require broad, timely, and updated disclosure of all required disclosure information.

This Policy applies to all new contracts and amendments, to existing contracts (including contract extensions), letters of engagement, consulting purchase orders and similar agreements and to bidders' proposals across the System where the total amount of agreement is \$10,000 or more. The Policy also applies to proposals and contract awards made from Requests for Proposal and Invitations for Bid, regardless of amount.

Check the applicable box:

- ☐ Proposer/Contractor represents that it has not hired, engaged or retained an Agent within the meaning of Section A.1. of the Policy and that no individual or entity has served or is serving for the benefit of or on behalf of Proposer/Contractor within the meaning of Section A.1. Proposer/Contractor further represents that it has given or offered no payments, gifts, loans or other things of value within the meaning of the Policy to any current or former board or staff member of CalPERS during the twelve (12) months preceding the initiation of the Contract.
- ☐ Proposer/Contractor makes disclosures pursuant to Section A of the Policy, and disclosures and all associated documentation required by Section A are attached.

I, the official named below, acknowledge that I have read and understand the Policy, and that the firm named above has complied with the Policy, and hereby declare that I am duly authorized to make this declaration on behalf of the above named firm. I declare that the foregoing is true and correct and that this declaration was executed on the date listed below.

Authorized Signature_____
Date_____
Name and Title (Please Print)

ATTACHMENT D

Phone: _____ Email: _____

Please provide us with the following information regarding your firm. The information provided will help us to guide future diversity efforts and will be used for statistical purposes only.

[illegible]

The categories above are obviously not mutually exclusive. We also realize the titles afforded attorneys in your firm's hierarchy may vary. Please answer to the best of your ability.

- **NATIVE AMERICAN OR ALASKAN NATIVE-** Persons having origins in any of the tribal peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.
- **ASIAN-** Persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent. This includes China, Japan, and Korea.
- **AFRICAN AMERICAN:** Persons having origins in any of the black racial groups of Africa.
- **FILIPINO-** Persons having origins in any of the original peoples of the Philippine Islands.
- **HISPANIC-** Persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- **PACIFIC ISLANDERS-** Persons having origins in the Pacific Islands, such as Samoa.
- **LGBT** – Indicates individuals who are openly Lesbian, Gay, Bisexual or Transsexual.

Firms contracting with CalPERS as an Outside Counsel Firm, will be required to annually update this form, and may also periodically update it at the firm's discretion.

CalPERS POLICY REGARDING BILLING PRACTICES AND FORMAT

CalPERS retains the services of a firm specializing in auditing legal bills. Based in part upon the recommendations contained in an audit report, and in part on our experiences in reviewing bills and in recent articles on the subject of billing, we have prepared the following information to clarify and specify CalPERS' policy with respect to billing practices and format:

I. Assignment Staffing

- A. Each outside counsel firm was selected and retained because of its representations concerning a specific expertise. CalPERS therefore expects, as both a matter of client relations and professional responsibility, that the attorneys assigned to represent CalPERS have the level of skill and experience necessary to perform the assigned tasks. CalPERS should not be billed for the time required for your firm's attorneys to become competent in their area of expertise.
- B. Selecting the attorneys to work on each CalPERS' assignment is generally a matter within the management discretion of each firm's "lead counsel." However, CalPERS expects that these assignments will be made with the **best interests of the client** as the paramount consideration. We understand and generally support the concern that junior and/or newer attorneys be exposed to work that will allow them to grow professionally. CalPERS should not, however, be disadvantaged in any manner (whether through the quality of the work produced or the resulting bill) because of this consideration. In this same vein, not all of CalPERS' legal work requires a great deal of experience. Therefore, we expect that (1) less experienced (and generally less costly) attorneys will be assigned the more routine matters that are clearly within their limited level of expertise; and (2) more experienced or senior attorneys will be assigned the more complex matters, or will assure that these matters are handled by their less experienced colleagues with no quality or cost detriment to CalPERS.
- C. The number of attorneys working on CalPERS' matters has, in a few previous instances, been excessive. This has resulted in what we believe to be unnecessary charges for communicating with one another (e.g., too many "interoffice conferences") and for commenting upon one another's work (too much "review" and "redrafting" of documents). Therefore, **we will only approve bills meeting the following limitations:**

Transaction (i.e., real estate or alternative assets) Work: No more than three attorneys, with no more than one of these being a junior attorney, should work on a transaction without CalPERS' pre-approval. This pre-approval may be obtained either as-needed, or through the initial budget (discussed on page 2). We recognize that transaction work in particular involves a heavy volume and wide variety of work, and that a division of labor is often the most expedient way to complete the tasks; this is especially true when a specific area of expertise is called for (e.g., tax, environmental, etc.). However, too much division can result

in duplication of effort and too much time being spent on the "learning curve." You should keep these concerns in mind when requesting approval to use additional attorneys.

Litigation Work: Routine cases (e.g., tenant and leasing disputes) should involve no more than one attorney without CalPERS' pre-approval. Complex cases may involve up to three attorneys without CalPERS' prior approval. If you have a question concerning whether a case is "routine" or "complex," please contact the Legal Office so that we can resolve the issue (this may also be resolved through the budget process, discussed below).

All Other Work: No more than two attorneys should work on a single assignment without CalPERS' pre-approval. Again, this pre-approval may be obtained either on an as-needed basis, or through the initial budget (discussed below).

II. **Billing Format**

- A. "Block billing", which is defined as combining into one time entry all of the different tasks performed by an attorney during one day and concerning a single billable matter, is not accepted by CalPERS. This practice makes it impossible for the client to understand how much time was devoted to each of the several tasks combined into the single entry. It is our understanding that all of the major billing software on the market can accommodate this request.
- B. Specifically describe the tasks performed, to avoid vague descriptions: e.g., "attention to file," "review correspondence," "interoffice conference." These descriptions do not adequately inform the client as to the specific service that was performed, and for which the attorney seeks a fee. What, specifically was done to "the file"? From whom was the correspondence, and to what did it pertain? Who participated in the conference, and what was discussed? **As the lead counsel for your firm, we expect each of you to review the billings of the members of your team to assure that they comply with these guidelines.**
- C. We expect to be billed for the amount of time expended on CalPERS' behalf, but no more. We believe that the concepts of "quarter-hour billing," and billing minimum fixed times for specified tasks (e.g., each telephone call being a minimum of 0.3, even if much less time was actually spent) and generally contrary to this expectation. Therefore, except with the Legal Office's express pre-approval, CalPERS' bills should not reflect either of these practices.
- D. Each firm is required, through our contracts, to submit invoices in a form approved by CalPERS. The only form acceptable to CalPERS includes not only the monthly billing totals and totals per assignment, but also the total billed to date for the contract year. This information is essential to assure that both CalPERS and counsel are kept aware of whether the firm is staying within the annual allocation. Counsel must keep CalPERS informed if the firm is working on an assignment that might cause it to exceed its "cap." If counsel waits until

the time is actually billed, counsel will have already exceeded CalPERS' contractual ability to pay.

It is Board policy to occasionally audit legal counsel bills. As a result, all legal firms are subject to legal fee audits.

III. **Budgets**

- A. Pre-approved written budgets are required before beginning work on any assignment. **The attorneys in the Legal Office have been instructed to obtain these budgets, and you are also responsible for supplying them.**³

Transaction Work:

1. Identify the attorney(s) proposed to work on the transaction team.
2. Describe the broad tasks expected to be required. For example, you can usually predict the types of key documents that you will have to either review or draft, and the types of issues that will need to be researched and addressed (e.g., land use/zoning questions, environmental issues, tax questions, control/liability concerns, etc.). If these are known, identify them and approximate the number of hours required to perform them. If time constraints are expected to affect the legal fees, note this.
3. Describe the broad tasks that might be required. If a particular task is only a possibility, rather than a likelihood, describe it and approximate the number of hours required.
4. Describe any travel and/or out-of-town meetings that are to be expected, and approximate the cost of each.
5. Identify any need for local counsel, special consultants, and other significant out-of-pocket expenses, and approximate the cost.
6. If you feel that the budget numbers reflected above will not adequately address the full range of your work on the transaction, provide additional information.

³ The billing statements must indicate the amount of time/cost spent during the month in each of the separate line items within the budget, and the amounts remaining per item. This can be accomplished through a cover memorandum, or through a separate table or chart.

Litigation Work²

NOTE: Depending upon the type of case, you may wish to submit a budget either for the complete handling (from assignment through resolution), or for particular periods (e.g., the first three months of a case, followed by another budget for the following period).

1. Identify the attorney(s) proposed to work on the litigation team.
2. Describe the broad tasks expected to be required. For example, you can usually predict the types of key documents that you will have to either review or draft, and the types of issues that will need to be researched and addressed. If these are known, identify them and approximate the number of hours required to perform them. Also, discovery (if applicable), trial or oral argument preparation, and any expected motions should also be address.
3. Describe the broad tasks that might be required. If a particular task is only a possibility, rather than a likelihood, describe it and approximate the number of hours required.
4. Describe any travel and/or out-of-town meetings that are to be expected, and approximate the cost of each.
5. Identify any need for local counsel, expert witnesses, and other significant out-of-pocket expenses, and approximate the cost.
6. If you feel that the budget numbers reflected above will not adequately address your work on the case, provide additional information.

Advice/Opinions

1. Identify the attorney(s) proposed to work on the assignment
 2. Identify the number of attorney hours and/or total fees to be expected.
- B. For work that is not covered by the above descriptions, please contact the Legal Office for guidance.
- C. We understand the difficulty in predicting the amount of work required in a particular case or transaction; much depends upon the actions and reactions of

² Real estate counsel are not required to submit litigation budgets for the routine asset management-related litigation. However, when it appears to you that a potential or actual case will involve a significant amount of attorneys' fees, you should contact the Legal Office to discuss the need for a budget.

unknown third parties. The request for a budget is not intended to be a "tool" to force outside counsel to perform services without compensation. We simply ask that you make a conscientious effort to advise us with respect to how much certain legal work might reasonably cost, so that we can make an informed decision regarding whether and how to proceed with the work. If you later feel that work beyond the budget is necessary, the Legal Office will work with you to evaluate the additional need. **We will respond to requests for budget pre-approval, and "extra" approval, with the same degree of good faith that we expect from you in making your request.**

IV. **Scope of Services**

- A. Each of your contracts contains a provision limiting CalPERS' obligation to pay to those services that are specifically requested by CalPERS, through the General Counsel. In the past, some firms have performed work because they thought it was "in CalPERS' best interests" or "something CalPERS would be interested in." **The Legal Office is your sole guide as to CalPERS' interests.** This applies to new issues, assignments, and contacts with third parties, as well as to litigation strategy.
- B. Specifically regarding litigation strategy, and except as to routine tenant/leasing matters, no significant pleading or paper should be filed on behalf of CalPERS without first being reviewed and approved by the Legal Office. You should also not conduct any research on any issue, or drafting of any pleadings or briefs, without first contacting the Legal Office to determine whether we can provide analogous research materials that may reduce your time expenditure.
- C. Since you are known as having an affiliation with CalPERS, and therefore are often contacted with potential cases in which CalPERS may become involved; you also may encounter issues that you believe CalPERS should address. In these situations, please contact CalPERS' General Counsel. The General Counsel has the responsibility, in consultation with CalPERS' executive staff and/or the Board, for determining whether this case/issue is necessary, consistent with related policies or activities, and of sufficient import to justify the expenditure of trust fund assets.
- D. **Fees for services that have not been authorized will not be paid.**

V. **Reimbursable Costs**

- A. Each of your contracts require CalPERS to reimburse you for "out-of-pocket expenses which are reasonably incurred in the performance of legal services in conformance with" your contract. As such, we expect that CalPERS will be billed for the actual costs incurred by your firm, except when the contract provides for costs based on percentage of fees billed, or when limited by applicable per diem

rates. We do not expect photocopying, telecopying, computer research, messenger service, or postage to represent "profit centers."³

- B. It would not be administratively feasible to require receipts to justify each of these requests for reimbursement. However, we do need to know the exact basis upon which the changes are calculated. Therefore, we ask that each of you respond to the following questions:
1. How are your in-house photocopying/duplicating charges calculated? If these charges are based on a per page rate, what is that rate and how was it derived?
 2. Similarly, how are the charges to CalPERS for telecopying, computer research, messenger service, and postage calculated? How do these charges relate to the actual expense incurred by the firm (e.g., is the amount billed to CalPERS for telecopying the same amount that is billed to the firm)

VI. STATE INCOME TAX WITHHOLDING REQUIREMENT FOR NONRESIDENT VENDORS

State income tax may be withheld in the payments to nonresident contractors or vendors that perform services in California or receive rent, lease or royalty payments from property, real or personal, located in California at the rate of seven percent of the total payments. For the vendors that are subject to this requirement, the seven percent withholding is a prepayment to Franchise Tax Board for their California state income tax.

The State Income Tax Withholding is a new California Franchise Tax Board requirement and may apply to out-of-state firms providing services in-state. CalPERS Fiscal Services Division plans to implement withholding requirements before December 31, 2010. Firms selected as outside counsel will work with CalPERS Fiscal Services Division to determine if the state withholding requirement applies. Additional information regarding the withholding tax can be found at the Franchise Tax Board website (www.ftb.ca.gov) (Search tip: "Withholding" or "FTB Publication #1017").

(Revised: 11-29-10)

³ You may be interested to know that in future outside counsel contracts, we will be exploring eliminating reimbursement for these types of "overhead" costs, under the theory that they should be reflected in the hourly rate charged for attorney time.

**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
RESTRICTED CONTACT POLICY**

California Government Code section 20153

- (a) During the process leading to an award of any contract by the system, no member of the board or its staff shall knowingly communicate concerning any matter relating to the contract or selection process with any party financially interested in the contract or an officer or employee of that party, unless the communication is (1) part of the process expressly described in the request for proposal or other solicitation invitation, or (2) part of a noticed board meeting, or (3) as provided in subdivision (c). Any applicant or bidder who knowingly participates in a communication that is prohibited by this subdivision shall be disqualified from the contract award.
- (b) During the evaluation of any prospective investment transaction, no party who is financially interested in the transaction, or an officer or employee of that party, may knowingly communicate with any board member concerning any matter relating to the transaction or its evaluation, unless the financially interested party discloses the content of the communication in a writing addressed and submitted to the executive officer and the board prior to the board's action on the prospective transaction. This subdivision shall not apply to communications that are part of a noticed board meeting, or as provided in subdivision (c).
 - (1) The writing shall disclose the date and location of the communication, and the substance of the matters discussed. The board shall prescribe other procedures concerning this disclosure.
 - (2) Any board member who participates in a communication subject to this subdivision shall also have the obligation to disclose the communication to the executive officer and board, prior to the board's action on the prospective transaction. The board shall prescribe procedures for this disclosure, including procedures to apply to board members who fail to disclose communications as required by the subdivision.
 - (3) Consistent with its fiduciary duties, the board shall determine the appropriate remedy for any knowing failure of a financially interested party to comply with this subdivision including, but not limited to, outright rejection of the prospective investment transaction, reduction in fee received, or any other sanction.

- (4) The communications disclosed under this subdivision shall be made public, either at the open meeting of the board in which the transaction is considered, or if in closed session, upon public disclosure of any closed session votes concerning the investment transaction.
- (c) The procedures and prohibitions prescribed by this section shall not apply to:
 - (1) Communications that are incidental, exclusively social, and do not involve the system or its business, or the board or staff member's role as a system official.
 - (2) Communications that do not involve the system or its business and that are within the scope of the board or staff member's private business or public office wholly unrelated to the system.